

720 CMR: DEPARTMENT OF HIGHWAYS

720 CMR 13.00: APPROVAL OF ACCESS TO STATE HIGHWAYS

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13.01: Authority, Scope, and Objective

(1) Authority. The Massachusetts Department of Highways (MassHighway) adopts 720 CMR 13.00 under the authority of M.G.L. c. 81, § 21 and M.G.L. c. 85, § 2. 720 CMR 13.00 supersedes the *Standard Operating Procedures for Review of State Highway Access Permits* adopted September 17, 1991. MassHighway may issue Standard Operating Procedures to implement 720 CMR 13.00.

(2) Scope and Intent. 720 CMR 13.00 applies broadly to two types of Permit applications to MassHighway:

- (a) Vehicular Access Permits; and
- (b) Non-vehicular Access Permits. *See* 720 CMR 13.02. Applications for Vehicular Access Permits are intended to benefit from the expedited Permit review features contained 720 CMR 13.03(5) and (6), as well as to the procedures for administrative appeals, 720 CMR 13.05(7), as the grant or denial of such Permits may affect the rights of specific Persons. Applications for Non-vehicular Access Permits will not be subject to administrative appeals, unless otherwise provided for under any applicable state law or regulation, as there is no right to conduct the activities for which such Permits are sought on the State Highway Layout (SHLO). In cases where a particular Project or activity may seek both vehicular and non-vehicular access, separate and distinct Permit applications should be filed.

720 CMR 13.00 does not apply to roadways within the Metropolitan Highway System, since those roadways are under the jurisdiction of the Massachusetts Turnpike Authority and are therefore not subject to M.G.L. c. 81, § 21. *See* M.G.L. c. 81A, § 3.

(3) Determination of Need for an Access Permit. A prospective Permit Applicant may request a determination from the District Highway Director (DHD) for the District in which the Project, work, or activity is located as to whether, in a particular instance or circumstance, an Access Permit is required. Any prospective Applicant seeking such a determination must provide all necessary and appropriate information requested by the DHD upon which the DHD can evaluate the request and base the determination. The DHD will issue such determination in writing within ten business days of receipt of such necessary and appropriate information.

13.02: Definitions

Applicant. The Person applying for a Permit.

Average Daily Traffic (ADT). The total trip generation of a proposed facility calculated using the techniques of the most recent Institute of Transportation Engineers Trip Generation Manual and expressed as passenger car equivalents to account for truck traffic.

Category I - Minor Vehicular Access Permits. Access Permits for Projects that require entry to the SHLO, require little to no non-signalized modifications, and do not significantly alter the operating characteristics of traffic. These Projects ordinarily do not exceed the Massachusetts Environmental Policy Act (MEPA) transportation thresholds beyond the filing of an Environmental Notification Form (ENF), and they will be reviewed by the DHD of the District within which the Project is located.

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Category II - Major Vehicular Access Permits. Access Permits for Projects that require significant non-signalized modification that may alter the operating characteristics of traffic at a residential or commercial driveway at its intersection with the SHLO; that require significant non-signalized modifications that may alter the operating characteristics of traffic at any other intersection or roadway under the jurisdiction of MassHighway or upon any roadway under the jurisdiction of MassHighway; that require installation of a new traffic signal at a residential or commercial driveway at its intersection with the SHLO or at any other intersection under the jurisdiction of MassHighway or upon any roadway under the jurisdiction of MassHighway; or that require modification of structures, equipment, or hardware at an existing traffic signal at a residential or commercial driveway at its intersection with the SHLO or at any other intersection under the jurisdiction of MassHighway or upon any roadway under the jurisdiction of MassHighway. These Projects ordinarily require MEPA review, and the proposed Project will be reviewed by the DHD of the District within which the Project is located and the appropriate sections of MassHighway's Headquarters Office in Boston.

Category III – Complex Vehicular Access Permits. Access Permits for Projects requiring actions similar to major Projects, but which require a new or altered SHLO; that require significant non-signalized and/or signalized modifications within the SHLO over an extended distance or at a number of intersections that significantly alters the operating characteristics of traffic along a corridor; or that require the construction of a new, or modifications to an existing, bridge. These Projects generally require MEPA review and may require Federal review. The proposed Projects will be reviewed by the DHD of the District within which the Project is located, the appropriate sections of MassHighway's Headquarters Office in Boston, and the Federal Highway Administration (FHWA), if necessary.

EOEEA. The Executive Office of Energy and Environmental Affairs.

MEPA. The Massachusetts Environmental Policy Act (M.G.L. c. 30, §§ 61 through 62H) and implementing regulations (301 CMR 11.00).

MHC. The Massachusetts Historical Commission Act (M.G.L. c. 9, §§ 26 through 27C and implementing regulations (950 CMR 71.00).

Non-vehicular Access Permits.

- (a) Access to the SHLO for Projects that do not involve physical modifications;
- (b) Connection to or discharge to any MassHighway drainage system (in cases where it can be shown that no practical alternative exists);
- (c) Construction or repair of utilities within the SHLO;
- (d) Tree cutting or landscaping within the SHLO; or
- (e) The use of explosives to remove material from within 250 feet of the SHLO.

Owner. The Person owning the land from which access is being sought to the SHLO.

Permit. A Vehicular or Non-vehicular Access Permit.

Person. Any individual, corporation, partnership, trust, association, or other business or non-profit organization; any agency, department, board, commission, or authority of the Commonwealth; and any Federal, municipal, or regional governmental or intergovernmental agency, department, board, commission, authority, or other entity.

Project. Any work or activity undertaken by a Person that requires or may seek vehicular and/or non-vehicular access.

Section 61 Findings. The findings issued by MassHighway pursuant to M.G.L. c. 30, § 61.

State Highway Layout (SHLO). Commonwealth property under the custody and control of MassHighway being used and laid out for highway purposes; this does not include excess parcels that may have been acquired by MassHighway but which are not being used for highway purposes.

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Substantial Increase in or Impact on Traffic. A Project that meets or exceeds any of the following thresholds:

- (a) Generation of 2,000 or more new ADT on roadways providing access to a single location;
- (b) Generation of 1,000 or more new ADT on roadways providing access to a single location and construction of 150 or more new parking spaces at a single location;
- (c) Construction of 300 or more new parking spaces at a single location; or
- (d) Creation of a change in the type, pattern, or timing of traffic that is determined by MassHighway to generate a significant impact on traffic flow and safety.

Vehicular Access Permit. Vehicular Access Permits are required for:

- (a) New residential or commercial driveways or streets intersecting the SHLO;
- (b) Physical modifications to existing residential or commercial driveways or streets at their intersection with the SHLO;
- (c) Change in use of an existing residential or commercial driveway onto SHLO that results in a Substantial Increase in or Impact on Traffic over the current use; and
- (d) Construction of new, or change in use of existing, residential or commercial driveway from properties that abut the SHLO to serve a building or facility, or expansion of a building or facility, that generates a Substantial Increase in or Impact on Traffic.

13.03: Permit Application Processing

(1) Submission of Application. The DHD within whose District boundaries access is sought shall be responsible for issuance of Permits. An Applicant shall request issuance of a Permit on a standard form issued by MassHighway and shall include all support material required on the application form. The application form shall be filed with the DHD within whose District boundaries access is sought.

(2) Completeness Pre-review. Any materials submitted for MassHighway review as part of a Permit application will be date-stamped by the District Permits Engineer upon his/her receipt. Upon receipt, the DHD or his/her designee shall review the contents of the application to determine if any materials necessary to conduct a detailed review are missing. The DHD or his/her designee shall notify the Applicant of any missing documentation within ten business days from the stamped date or the application will be considered complete and the detailed review period shall begin. The Pre-review process shall be followed until the DHD or his/her designee determines that the application contains all of the material necessary to conduct a detailed review.

(3) Completeness of Application. A Permit application shall be determined to be complete by the DHD or his/her designee once the following items have been received and determined to be in a format acceptable to conduct a detailed review:

- (a) MassHighway Permit application form with all information items appropriately completed;
- (b) All supporting data as listed on the application form;
- (c) Evidence of EOEEA certification of compliance MEPA, if necessary. This includes evidence of having been granted a waiver of or otherwise completed MEPA for a portion of the Project;
- (d) A Section 61 Finding issued by MassHighway, for those Projects where an Environmental Impact Report (EIR) was required under MEPA relative to a MassHighway Access Permit, unless waived by MassHighway;
- (e) Engineering plans in a format acceptable to the DHD or his/her designee to conduct a detailed review where work within the SHLO is required. No engineering plan shall be deemed acceptable unless the State Highway record baseline and sidelines are clearly shown and the proposed work is tied into the record baseline; and
- (f) A check or money order payable to the Commonwealth of Massachusetts in the amount required by the Secretary of Administration and Finance in 801 CMR 4.02.

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(4) Required Signatures for Permit Applications. The Applicant must provide MassHighway with evidence certifying the consent to the application by the property Owner(s), as required by MassHighway on the Permit application form. If an agent is representing an Applicant, the application shall include a notarized letter from the Applicant outlining the specific duties and responsibilities of the agent. Where work is proposed on a municipal utility, the utility department for the municipality must sign the application as the Applicant(s).

(5) Time Limits for Detailed Application Review. The maximum review times for Permit applications are as follows:

(a) Category I Permits. The detailed review of the first submission (ordinarily the 25% Design) shall be completed within 20 business days following a determination by the DHD or his/her designee that the application is complete. The detailed review of the second submission (ordinarily the 75%/100% Design) shall be completed within 20 business days following receipt by the District Permits Engineer. The detailed review of the final submission (ordinarily final Plans, Specifications, and Estimates (PS&E)) shall be reviewed within ten business days following receipt by the District Permits Engineer. Once the PS&E submission is approved, the DHD will issue the Permit authorizing the work to be performed in accordance with the procedures outlined in 720 CMR 13.03(6).

(b) Category II Permits. The detailed review of the first submission (ordinarily the 25% Design/Functional Design Report) shall be completed within 35 business days following a determination by the DHD or his/her designee that the application is complete. The detailed review of the second submission (ordinarily the 75%/100% Design) shall be completed within 20 business days following receipt by the District Permits Engineer. The detailed review of the final submission (ordinarily final PS&E) shall be reviewed within 20 business days following receipt by the District Permits Engineer. Once the PS&E submission is approved, the DHD will issue the Permit authorizing the work to be performed in accordance with the procedures outlined in 720 CMR 13.03(6).

(c) Category III Permits. Review submissions and associated review time frames will be negotiated by the Applicant and MassHighway. Negotiations shall commence within 15 business days of receipt of a written request by the Applicant to the Chief Engineer. If a mutual agreement is not reached within 40 working days following the commencement of the negotiation, non-binding arbitration by an arbiter acceptable to both parties shall be used.

(d) Non-vehicular Access Permits. Non-Vehicular Access Permits will be reviewed by the DHD of the District within which the Project is located; provided, however, that the DHD may refer any such application to the Chief Engineer in Boston for review and the Chief Engineer may remove any such application from the District to Boston for review. Such Permits shall be reviewed in accordance with 720 CMR 13.03(5)(b) and issued in conformance with MassHighway Standard Operating Procedures.

If MassHighway fails to meet any of the time frames outlined in 720 CMR 13.03(5), the Applicant may notify the DHD in cases involving a Category I Permit and the Chief Engineer in cases involving Category II or III Permits in writing that a review deadline has expired. In such cases, the DHD or the Chief Engineer shall ensure that the applicable review is completed no later than five business days from receipt of such notification. Once the PS&E submission is approved, the DHD will issue the Permit authorizing the work to be performed in accordance with the procedures outlined in 720 CMR 13.03(6).

(6) Five-day Permit Issuance Deadline. Once the PS&E submission is approved, the DHD shall issue the associated Permit within five business days. If the DHD has not issued the Permit within five business days, the Applicant may notify the Chief Engineer in writing. In such cases, the Chief Engineer shall ensure that the Permit is issued within two business days of receipt of the Applicant's notice and receipt of the following, if not already in the Permit file:

(a) For Projects with a clear "area of potential impact" (as defined in 950 CMR 71.00) to properties listed in the State Register of Historic Places, either:

1. a letter from the MHC indicating compliance with M.G.L. c. 9, §§ 26 through 27C;
- or

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2. certification from the Applicant that the MHC failed to determine adverse effect within 30 days of its receipt of an MHC Project Notification Form and/or an Environmental Notification Form (ENF);
 - (b) Evidence of approvals or decisions, if necessary, from the Conservation Commission in the community in which the Project is proposed; and
 - (c) A Section 61 Finding issued by MassHighway, for those Projects where an Environmental Impact Report (EIR) was required under MEPA relative to a MassHighway Access Permit, if previously waived by Mass Highway as part of the application process.
- (7) Recording of Permits. MassHighway will issue the Permit to the Applicant named on the Permit application submitted to and reviewed by MassHighway. Unless otherwise noted, after expiration of all appeal rights, the Applicant shall record any Vehicular Access Permit or any Non-vehicular Access Permit involving drainage at the appropriate registry of deeds. Any Permit issued by MassHighway that requires recording shall not be effective until recorded at the appropriate registry of deeds and a notice of recording is submitted to the DHD.
- (8) Coordination with MEPA Review. For Projects requiring MEPA review, MassHighway will comment to the Secretary of EOEEA and communicate with Project proponents during the MEPA process in order to identify the Project-related highway impacts and appropriate mitigation as early as possible. Resolution of traffic mitigation requirements through the MEPA process will minimize reconsideration of mitigation during the MassHighway Section 61 and Access Permit process. In order to minimize damage to the environment caused by transportation-related air pollution, including greenhouse gas emissions, MassHighway shall, in cooperation with the Secretary of EOEEA, review and comment on measures identified in the MEPA process to avoid, minimize, or mitigate such transportation-related air pollution, and shall include as conditions in its Section 61 Finding measures to avoid, minimize, or mitigate such transportation-related air pollution. Early identification of mitigation will assist Project proponents in planning and managing Project costs. MassHighway coordination with MEPA review will reduce the total time required to obtain Project approvals.
- (9) Denial of a Permit Application. The DHD may deny the issuance of a Permit due to the failure of the Applicant to provide sufficient highway improvements to facilitate safe and efficient highway operations, or when the construction and use of the proposed access would create a condition within the SHLO that is unsafe that will interfere with the free flow of traffic or that endangers the public safety and welfare. Under M.G.L. c. 81, § 21, the Board or Department in a municipality with authority over public roadways may notify MassHighway by registered mail of its objection to a proposed new or modified residential or commercial driveway intersecting the SHLO. If MassHighway agrees with the objection, which must be based on traffic safety concerns, MassHighway shall not grant the Permit.

13.04: Criteria for Review of Applications

- (1) Review of Engineering Plans. The DHD shall require that engineering plans and specifications provide for safe and efficient access, which protects the operational integrity of the State Highway. Plan review and approval shall be based on the standards in the most recent Manual on Uniform Traffic Control Devices (MUTCD), including the most recent Massachusetts Amendments, MassHighway's Project Development & Design Guide or its successor, MassHighway's Standard Specifications for Highway and Bridges, and any then current technical policies or engineering directives issued by MassHighway.
- (2) Permit Conditions. The DHD shall condition a Permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, and to avoid or minimize environmental damage during the construction period and throughout the term of the Permit. Such conditions may include, but not be limited to:
 - (a) Necessary limitations on turning movements;
 - (b) Necessary measures to ensure the safety of pedestrians, motorists, and those engaged in the Project, work or activity contemplated under the Permit;
 - (c) Restrictions on or requirements for the number and configuration of access points to serve the land parcel;

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- (d) Vehicle trip reduction techniques to be implemented for the development;
- (e) Necessary and reasonable efforts to maintain existing levels of service;
- (f) Design and construction of necessary highway improvements by the Permittee;
- (g) Reimbursement by the Permittee of costs of MassHighway inspection of highway improvement work; and
- (h) The requirements of the Section 61 Finding of MassHighway, where applicable.

(3) Design Exceptions. MassHighway recognizes 13 controlling criteria that, if not met, require formal approval of design exceptions. These criteria are listed in the Massachusetts Highway Department Project Development and Design Guide. Sufficient documentation of design exceptions is required to demonstrate that sound engineering judgment was used to design the improvements. Documentation shall be prepared in accordance with the MassHighway's Project Development & Design Guide and shall be signed by Registered Professional Engineer. All exceptions must be approved by the Chief Engineer. If a design exception is sought as part of a Permit, an additional 20 business days beyond the time allowed in 720 CMR 13.03(5) shall be provided for review of the submission.

In addition to design exceptions from controlling criteria, any exceptions to full compliance with 521 CMR, The Rules and Regulations of Massachusetts Architectural Access Board, must also be identified in the Access Permit. The Applicant is responsible for obtaining all necessary variances from the Access Board. MassHighway shall not issue any Permit that is not in compliance with 521 CMR.

(4) Review of Related Projects. Permit applications shall be reviewed in the context of the section(s) of state highway that is (are) affected by traffic to be generated by a Project for which a Permit is sought. Whenever practical, the DHD shall coordinate review and issuance of Permits for multiple Projects in proximity to each other in order to facilitate safe and efficient traffic operations and to avoid or minimize adverse environmental impacts. In cases where a proposed access is to be shared by multiple development sites, the Applicant(s) shall provide evidence of the rights of access between the parties involved prior to the issuance of the Access Permit. In these cases, an Access Permit shall be issued for each development site under separate ownership.

(5) Section 61 Finding. For all Projects that receive EOEEA certification of a Final EIR, which was scoped for a MassHighway Access Permit, MassHighway will issue a Section 61 Finding at the Applicant's request within 25 business days for Category II Projects or 40 business days for Category III Projects. The Section 61 Finding shall indicate that MassHighway has completed its review of the Project in the context of MEPA and that the proposed land use is approved by MassHighway subject to the conditions outlined in the Finding. The Finding shall be incorporated by reference into any Permit to be issued by MassHighway for the Project. The requirement to issue a Section 61 Finding and a Permit does not preclude the issuance of a Temporary Access Permit under 720 CMR 13.05(2). The Section 61 Finding will specify the driveway access and off-site mitigation measures necessary for initial occupancy of the Project. Additional mitigation measures, if any, and the construction timing of these additional measures may also be specified in the Section 61 Finding. Plan review of the measures not required for initial occupancy shall not delay the issuance of the Permit for the Project for this initial occupancy.

13.05: Access Permit Provisions

(1) Duration of Permits.

(a) Construction. Construction of the proposed Project, work, or activity within the SHLO under the terms of a Permit must be completed within one year of the date of issue, unless otherwise stated in the Permit. The DHD may extend the Permit by an additional one year upon written request of the Applicant or Permittee, provided said request is filed prior to the expiration of the original Permit.

(b) Use. Permits upon issuance shall allow ingress to the property served and egress to the State Highway for an indefinite period, but a new Permit shall be required when:

1. More than five years has lapsed between the date of issuance of a Permit and the start of construction of the use or facility;

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2. Constructing, reconstructing, or expanding an existing facility on the property served, which results in a Substantial Increase in or Impact on Traffic on the State Highway;
3. Constructing a new access or modifying an existing permitted access; or
4. When a Permit would otherwise be required based on 720 CMR 13.00.

(2) Temporary Access Permits for Site Construction and Related Activities. Upon receipt of an application, the DHD may grant a Temporary Access Permit for site access for the purpose of performing site construction, land surveying, land clearing, Project preparation, and related activities. Temporary Access Permits shall specify an expiration date, which shall not exceed one year from the date of issuance. Temporary Access Permits shall not allow building occupancy or use of the driveway(s) by the public. Temporary Access Permits may be issued for construction and related activities that precede a Project that requires the filing with the Secretary of EOEEA under MEPA for a MassHighway Access Permit, provided the site access, construction, or use in and of itself does not exceed any MEPA thresholds. The issuance of a Temporary Access Permit shall in no way be construed as an indication that an Access Permit for a residential or commercial driveway for the site will be granted.

(3) Construction Under a Permit. Construction under a Permit may commence upon 48 hours written notice (which may be delivered by facsimile or electronic mail) or logged telephone notice to the DHD or his/her designee by the Permittee.

(4) Suspension or Revocation of Permit. When the DHD determines that a violation of M.G.L. c. 81, § 21 or M.G.L. c. 85, § 2 has occurred, or that a Permit condition has not been complied with, the Permit may be suspended or revoked.

(a) Suspension.

1. Emergency Suspension. In the case of an emergency condition or imminently unsafe travel conditions within the SHLO that is due to non-compliance with conditions on a permitted facility, the DHD or his/her designee may issue a verbal warning of Permit suspension to a Permittee requiring compliance with the Permit. Within 24 hours, if the condition continues, the DHD will notify the Permittee, in writing by hand delivery or by certified mail, an emergency order immediately suspending the Permit and outlining the reason(s) for the suspension and the steps that shall be taken by the Permittee in order to allow said suspension to be lifted.

2. Standard Suspension. The DHD will notify the Permittee in writing by certified mail a minimum of 24 hours in advance of the effective suspension of the Permit outlining the reason(s) for the suspension and the steps that shall be taken by the Permittee in order to avoid or lift said suspension.

(b) Revocation. The DHD will notify the Permittee in writing by certified mail of the intent to revoke a Permit outlining the reason(s) for such intended revocation, the steps that shall be taken by the Permittee to avoid such revocation, and establishing a date, time, and place for a hearing, prior to revocation, as provided by M.G.L. c. 30A, § 13. Prior to establishing a revocation hearing, the DHD shall notify the Commissioner and send a copy to the Chief Counsel's Office.

(5) Enforcement. MassHighway may issue written orders to enforce the provisions of M.G.L. c. 81, § 21, or the provisions of any Permit, order, or approval issued under M.G.L. c. 81, § 21. Any Person who violates any provision of 720 CMR 13.00 shall be punished in accordance with M.G.L. c. 81, § 21.

(6) Performance Bonds. The DHD may require a performance bond to be posted by the Applicant for the estimated cost of the construction within the SHLO and possible damages. The limits of said bond shall be in accordance with M.G.L. c. 81, § 21. The performance bond shall be posted by the Applicant prior to the issuance of the Permit.

(7) Administrative Appeals. An Applicant who is aggrieved by the issuance, denial, modification, suspension, or revocation of a Vehicular Access Permit may appeal in writing to the Commissioner. Upon consultation with the Permit Applicant and appropriate MassHighway personnel, and after a hearing under the provisions of M.G.L. c. 30A, § 13, if required, the Commissioner may uphold, modify, or overturn the action or decision of the DHD.

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13.06: Miscellaneous

(1) Transition. Any Permit application or submission as part of a Permit application shall be governed under the procedures in effect at the time of submission. In the case of a submission made prior to November 16, 2007, the Applicant may withdraw the submission and make a new submission under 720 CMR 13.00.

(2) Severability. The provisions of 720 CMR 13.00 shall be deemed severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

REGULATORY AUTHORITY

720 CMR 13.00: M.G.L. c. 81, § 21 and c. 85, § 2.